No. 98-8487-CFX Title: Richard M. Cross, Petitioner
v.
Richard Wieking, Clerk, United States District Court
for the Northern District of California

Docketed:
March 15, 1999 Court: United States Court of Appeals for
the Ninth Circuit

Entry	Date	Proceedings and Orders
	Feb 14 1999	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due April 14, 1999)
	Feb 14 1999	Motion of petitioner for leave to proceed in forma pauperis filed.
	Apr 28 1999	DISTRIBUTED. May 13, 1999
	May 17 1999	REDISTRIBUTED. May 20, 1999
	May 24 1999	Motion of petitioner for leave to proceed in forma pauperis DENIED. See Rule 39.8. Petitioner is allowed until June 14, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Dissenting opinion by Justice Stevens. Opinion per curiam. (Detached opinion.)

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. 98-8487 (2)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Supreme Court, U.S.
FILED
FEB 14 1999
OFFICE OF THE CLERK

Richard Cross — PETITIONER
(Your Name)

VS.

Richard Wickis — RESPONDENT(S)

PROOF OF SERVICE

I, Richard Cross, do swear or declare that on this date, 2-12, 19 98, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

United States Court District Court northern District Richard Wickis 450 Golden Gate Ave San Francisco 94102.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2-12, 19 98

Richard Cross
(Signature)

18 pp

For the Court of Appeals

IN THE UNITED STATES DISTRICT COURT
FOR THE ~~NORTHERN DISTRICT OF~~ CALIFORNIA
Court of Appeals Ninth Circuit

Richard Cross Plaintiff, v. Richard Kirkland Defendant.	CASE NO. PRISONER'S IN FORMA PAUPERIS APPLICATION

I, Richard Cross, declare under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes _____ No X

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

Gross: _____ Net: _____

Employer: _____

_____

If the answer is "no," state the date of last employment and the amount of the gross and net salary and wages per month which you received. (If you are imprisoned, specify the last place of employment prior to imprisonment.)

_____

_____

2. Have you received, within the past twelve (12) months, any money from any of the following sources:

a. Business, Profession or self employment — Yes _____ No _____

b. Income from stocks, bonds, or royalties? — Yes _____ No _____

c. Rent payments? — Yes _____ No _____

d. Pensions, annuities, or life insurance payments? — Yes _____ No _____

e. Federal or State welfare payments, Social Security or other government source? — Yes _____ No _____

If the answer is "yes" to any of the above, describe each source of money and state the amount received from each.

_____

_____

3. Are you married? Yes _____ No _____

Spouse's Full Name: _____

Spouse's Place of Employment: _____

Spouse's Monthly Salary, Wages or Income:

Gross $_____ Net $_____

4. a. List amount you contribute to your spouse's support:

$ _____

b. List the persons other than your spouse who are dependent upon you for support and indicate how much you contribute toward their support:

_____

_____

5. Do you own or are you buying a home? Yes _____ No _____

Estimated Market Value: $_____ Amount of Mortgage: $_____

6. Do you own an automobile? Yes _____ No _____

Make _____ Year _____ Model _____

Is it financed? Yes _____ No _____ If so, Total due: $ _____

Monthly Payment: $ _____

7. Do you have a bank account? (If you are a prisoner, include funds in your prison account, and provide the certificate attached, signed by an officer of the prison.)

Yes _____ No ~~_____~~

Name(s) and address(es) of bank: _____

_____

Present balance(s): $ _____

Do you own any cash? Yes _____ No ~~_____~~ Amount: $ _____

Do you have any other assets? (If "yes," provide a description of each asset and itr estimated market value.) Yes _____ No ~~_____~~

_____

8. What are your monthly expenses?

Rent: $ _____ Utilities: _____

Food: $ _____ Clothing: _____

Charge Accounts:

Name of Account	Monthly Payment	Total Owed On This Account
_____	$ _____	$ _____
_____	$ _____	$ _____

9. Do you have any other debts? (List current obligations, indicating amounts and to whom they are payable.)

_____

_____

I consent to prison officials withdrawing from my trust account and paying to the court the initial partial filing fee and all installment payments required by the court.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in the dismissal of my claims.

11-19-98
DATE

SIGNATURE OF APPLICANT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Richard Ross
Appellant/Petitioner

CASE NO.

98-17113

vs.

Richard McKinley
Appellee/Respondent

APPELLANT'S OR PETITIONER'S INFORMAL BRIEF

1. Jurisdiction

a. Timeliness of Appeal or Petition:

(i) Date of entry of judgment or order of district court: 8-27-98

(ii) Date of service of any motion made after judgment (other than for fees and costs): _____

(iii) Date of entry of order deciding motion _____

(iv) Date notice of appeal or petition filed 9-17-98

(v) For prisoners, date you gave notice of appeal to prison authorities 9-9-98

b. PLEASE ATTACH ONE COPY OF EACH OF THE FOLLOWING:

1. The order from which you are appealing
2. The district court's entry of judgment
3. The district court docket sheet

In the United States District Court
For the Northern District of California

FILED
SEP 17 1998
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO DIST OF CA

Richard Cross
Petitioner

V.S.
Richard Wiekin
United States District Court

Respondent

Case No. C-98-3187 VRW (PR)

Notice of Appeal

To; The Hon. Entitle Court, Petitioner respectfully submits an notice of appeal to the Respondents in the United States Court of Appeals, For the Ninth Circuit, From the Dicision Dated 9-1-98

9-8-98
Date

Richard Cross
Pro Pr
Richard Cross C-76369
P.O. Box 7500 D-12-57B
Crescent City, Ca.
95531

TERMED APPEAL

U.S. District Court
U.S. District for the Northern District of California (S.F.)

CIVIL DOCKET FOR CASE #: 98-CV-3187

Cross v. Wieking
Assigned to: Judge Vaughn R. Walker
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 08/18/98
Nature of Suit: 555
Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

RICHARD M. CROSS
Plaintiff

Richard M. Cross
C-78319
[COR LD NTC] [PRO SE]
PBSP-II
Pelican Bay State Prison
P O Box 7500
Crescent City, CA 95531

v.

RICHARD WIEKING, Northern District Clerk
defendant

Proceedings include all events. TERMED
3:98cv3187 Cross v. Wieking

APPEAL

8/18/98	1	COMPLAINT - No Summons(es) issued; Fee status ifpp entered on 8/18/98 [3:98-cv-03187] (11m) [Entry date 08/24/98]
8/18/98	1	IN FORMA PAUPERIS AFFIDAVIT by Plaintiff Richard M. Cross for leave to proceed in forma pauperis [3:98-cv-03187] (11m) [Entry date 08/24/98]
8/18/98	2	CLERK'S NOTICE re insufficient in forma pauperis application [1-1] [3:98-cv-03187] (11m) [Entry date 08/24/98]
8/27/98	3	IN FORMA PAUPERIS AFFIDAVIT by Plaintiff Richard M. Cross for leave to proceed in forma pauperis [3:98-cv-03187] (11m)
8/28/98	4	ORDER by Judge Vaughn R. Walker DENYING request for leave to proceed in forma pauperis [3-1] [1-1], DISMISSING the acti n without prejudice to bringing it in a paid complaint; terminating case ; appeal filing ddl 10/1/98 (Date Entered: 9/1/98) (cc: all counsel) [3:98-cv-03187] (11m) [Entry date 09/01/98]
9/16/98	5	NOTICE OF APPEAL by Plaintiff Richard M. Cross from Dist. Court decision order terminating case [4-1], order [4-2] Fee status Not paid [3:98-cv-03187] (11m) [Entry date 09/17/98]
9/16/98	--	Mailed request for payment of docket fee to appellant (cc to USCA) [3:98-cv-03187] (11m) [Entry date 09/17/98]
9/16/98	--	Docket fee notification form and case information sheet to USCA [5-1] [3:98-cv-03187] (11m) [Entry date 09/17/98]
9/16/98	--	Copy of notice of appeal and docket sheet to all counsel [3:98-cv-03187] (11m) [Entry date 09/17/98]
9/16/98	--	CERTIFICATE of Record mailed to USCA, counsel notified. [3:98-cv-03187] (11m) [Entry date 09/17/98]

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Richard W. Wieking
Clerk

450 Golden Gate Avenue
San Francisco, CA 94102
415.522.2000

September 17, 1998

Richard Cross
C 78319
Pelican Bay State Prison
PO Box 7500
Crescent City CA 95532

SUBJECT: Request for Payment of Docket Fee

Title: **Richard Cross -v- Richard W. Wieking**

Case Number: **C 98-3187 VRW (pr)**

Court of Appeals Number:

A notice of appeal was filed with this Court on **9/17/98** and the docketing fee of **$105.00** has not been received. Please forward the above referenced fee to this office immediately.

The check is to be made payable to "CLERK, U.S. DISTRICT COURT."

Sincerely,

RICHARD W. WIEKING, Clerk

by: Lili Marbella
Case Systems Administrator

cc: U.S. Court of Appeals

2. What are the facts of your case?

Petitioner Has Filed a 42 USC 1983 Complaint of Richard Wilkins For Failure To Promptly File Notice of Appeals Dated on 3-31-98 #C-98-0431, 4-24-98, C#-98-0728, 4-24-98 #C-98-0727, 4-24-98 #C-98-0817, 4-24-98 #C-98-0818, 4-24-98 #C-98-0733, 5-7-98 #C-98-1216, 5-7-98 #C-98-1008, 5-7-98, C-98-1080, 5-7-98 #C-98-1271, 5-7-98 #C-98-1397, 5-21-98 #C-98-3603, 6-18-98 #C-98-1957.

Pursuant to Fed Rules of App. Pro. Rule 3, 4. For this Well He is in Violation of Rule 45 Duty of Clerks. and Civil Pro. Rule 77. and 79. Richard Wilkins Has Delayed the Appeal Process By not Filing said Notices Promptly, His Conduct and Allegations is one For Liability For Violation of Constitutional Rights, and Due Process.

He Has Failed To File with the Court of Appeal said Notice's of Appeals

Also that Richard W. Wilkins Has Abused His Discretion To Perform His Ministerial Acts.

3. What did you ask the district court to do (for example, award damages, give injunctive relief, order your release from prison, etc.)?

punitive damages for violation of Contract

4. State the claim or claims you raised at the district court.

That Richard Wilkins Failed to promptly file notice of appeals in the District Court

5. What issues are you raising on appeal?

That Richard Wilkins Failed to follow Federal Rules of Appellate or Civil Procedure for filing Notice of Appeal in the District Court to the Court of Appeals

6. Did you present all these issues to the district court?

If not, why?

Yes/No

7. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

UNDER 42 USC 1983 OF THE Civil Rights Act OF 1871 A Petitioner MAY SEEK Redress WHEN A Person ACTING UNDER Color OF Federal Law, DEPRIVES A Petitioner OF Rights GUARANTEED BY THE Constitution AND Federal Laws. See Carlson V. Green 446 U.S. 14, 18-19 (1980).

IT IS Clear THAT Petitioners Constitutional Rights TO Due PROCESS, AND ACCESS TO THE Courts HAS BEEN VIOLATED, AND THAT ACCESS TO THE Court IS A Privilege AND Protected BY THE 14TH Amendment TO THE Constitution. See Boddie V. Connecticut 401 U.S. 371, 374, (1971) Also. Chambers V. Baltimore Railroad Co. 207 U.S. 142 (1907) AND Gilbert V. Stearns 125 F. Supp 516, 521 (N.D. Ill. 1954)

Section 1983 IS NOT ITSELF A Source OF Substantive Rights But RATHER IT IS A Source OF VINDICATING Federal Rights ESTABLISHED ELSEWHERE, See Albright V. Oliver 114 S.Ct 807, 811 (1994) (Rehnquist & Kennedy) Citing Baker V. McCollan 443 U.S. 137, 144 n.3 (1979) Accord Graham V. Town Line of Hempstead 47 F.3d 68, (2d Cir 1995)

Case No # 98-17113

#7 Cont:

1983 does not Create Substantive Rights. But Rather Provides Remedys for Violation of Rights Created By Federal Law, Citing City of Oklahoma City v. Tuttle 471 U.S. 808, 816, (1985) Section 1983 Supplement Available State Remedies Designed to Vindicate Violations of Constitutional Rights.

Official Immunity, while the Absolute or Qualified may Bar a Petitioner from obtaining Damages under this Section 1983, Despite the Fact that Section 1983 does not Facially Provide official Immunity, See Buckley v. Fitzsimmons 113 Sct 2606, 2613, (1993)

In Determining which Categories of official action merit Absolute Immunity the Court Employs a "Functional Approach" and looks to the Nature of official Function, and not to the Identity of the official acted or to his or his Employment Title. See Tenney v. Brandhove 341 U.S. 367, 376, (1951).

Even if Absolute Immunity is not available, Government officials performing Discretionary Functions "Generally are Shielded from Liability for Civil Damages Insofar as their Conduct does not Violate Clearly Established Statutory or Constitutional Rights of which a Reasonable Person would have Known See Harlow v. Fitzgerald 457 U.S. 800, 818, (1982) Quoting Davis v. Scherer 468 U.S. 183, 197, (1984).

Case no. # 98-17113

#7 Cont.

Qualified Immunity is not intended to protect public Incompetent, State officials or those who knowingly violate Constitutional Rights or Federal Law. See Pinder V. Commissioner of Corrections of the City of Cambridge (D Mo 1993) 821 F. Supp 376.

In order for a Right to be Clearly Established Right for purpose of Qualified Immunity analysis, the Right must be sufficiently Clear that a Reasonable Person would understand what he is doing Violates that Right. See Mathews V. Hagan (C.A. 8 Iowa 1993) 12 F.3d 783

Although Judicial Immunity might have Extended to the Court Clerk in his exercise of his or her discretionary duties, But where it was alleged that the Clerk did not take action in Question of Performance of these Duties, But instead acted on the Contrary to explicit statutory provision. There was no Basis for Extending Judicial Immunity, See Mitchell V. Meyer (D.C. Va 1973) 60 F.R.D. 582.

The Clerk for the Court who was alleged to have improperly Filing of papers or just plain failed to file notice's of motions, was not entitle to protection under this section 1983 who fails to discharge his mandatory ministerial duties, McCray V. State of Maryland (CA 4 MD. 1972) 456 F. 2d 1.

Case No. 78-1713

#7 Clerk

Since the action complained about was ministerial, the Clerk of the Court was not entitled to qualified immunity for suit for damages under section 1983, on grounds that he was a judicial officer with respect to duties failure to transmit supplemental pleadings to add/vote in a civil and criminal case. See Coleman v. Coleman (DC Md. 1977) 431 F. Supp. 380.

The proper remedy to mandamus, is to consider the precise function at issue, and determine whether his or her the Clerk is likely to be unduly inhibited in the performance of that function by the interest of liability for their conduct see Ostrer v. Carlson cases 467 F.2d 358. (DC Cir 1971) cert Granted District of Columbia v. Ostrer, Carter 409 U.S. 1074 (1972) also see Costelloe Construction Co. v. Hoehn 374 U.S. 827 (1963).

The position that the Courts have, is the responsibility to provide the Constitutional with some kind of judicial process, this is strongly supported by Article 5 of the Constitution. It is these rights to vindicate one's rights to due process of the law, a Court has a responsibility for enforcing these provision, see Baker v. Carr 369 U.S. 186 (1962))

Case No. 98-17113

#7 Cont:

This Principle is also Expressed in the Supreme Court, Holding that Due Process Clause of the 14th Amendment Prevents Court from "Discriminating" and "Penalizing Potential Litigants" From the use of Established Procedures because such an action would be "Equivalent of Denying them an opportunity to be heard upon their claimed Rights[s]". See Logan v. Zimmerman Brush Co. 455 U.S. 422-429-30 (1982) also see Boddie v. Connecticut 401 U.S. 371, 380, (1971).

Also under Section 1983, the Courts may only impose monetary liability on those ~~Responsible~~ Persons responsible for the Deprivation of Rights secured by the Constitution and Federal Law, See Kelly v. Curtis 21 F. 3d 1544, 1557, (11th Cir 1994) Punitive Damage awards appear when Retaliation Constitutional Rights were Violated, See also Davis v. Locke 936 F. 2d 1208, 1214, (11th Cir 1991).

Case No. 98-17113 Page 5

8. -Do you have any other cases pending in this court? If so, give the name and docket number of each case.

See Docket on Cross

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

See Docket on Cross

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

11-19-98
DATE

[signature] P-76315
SIGNATURE

P.O. Box 7500 D-1-105-B
ADDRESS
Crescent City CA. 95531

CERTIFICATE OF SERVICE

Case Name: Cross v. Wilkins

Case No.: G17113

IMPORTANT: 2 copies of this brief and any attachments must be sent to ALL parties in this case. Please list below the names and addresses of the parties who were sent a copy of your brief and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of this brief and any attachments was served, either in person or by mail, on the persons listed below.

Signature
Notary NOT required

Name	Address	Date Served
Richard Wilkins	Northern District of California 450 Golden Gate Ave. San Francisco CA. 94102	11-19-58

Per Curiam

SUPREME COURT OF THE UNITED STATES

RICHARD M. CROSS

98–8486 *v.*

PELICAN BAY STATE PRISON ET AL.

RICHARD M. CROSS

98–8487 *v.*

RICHARD WIEKING, CLERK, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 98–8486 and 98–8487. Decided May 24, 1999

PER CURIAM.

Pro se petitioner Cross seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny these requests as frivolous pursuant to Rule 39.8. Cross is allowed until June 14, 1999, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Cross in noncriminal matters unless he first pays the docketing fee required by Rule 38 and submits his petitions in compliance with Rule 33.1.

Cross has repeatedly abused this Court's certiorari process. On March 8, 1999, we invoked Rule 39.8 to deny Cross *in forma pauperis* status with respect to four petitions for certiorari. See *Cross* v. *Pelican Bay State Prison*, 526 U. S. ___ (1999) (three cases); *Cross* v. *Cambra*, 526 U. S. ___ (1999). Before that time, Cross had filed six petitions for certiorari, all of which were both patently frivolous and had been denied without recorded dissent. The 2 instant petitions bring Cross' total number of frivolous filings to 12, and he has 4 additional filings—all of

them patently frivolous—pending before this Court.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Cross' abuse of the writ of certiorari has been in noncriminal cases, and we limit our sanction accordingly. The order therefore will not prevent Cross from petitioning to challenge criminal sanctions which might be imposed on him. Similarly, because Cross has not abused this Court's extraordinary writs procedures, the order will not prevent him from filing nonfrivolous petitions for extraordinary writs. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our certiorari process.

It is so ordered.

JUSTICE STEVENS, dissenting.

As I have suggested in the past, the Court uses more of its "limited resources" preparing, entering, and policing orders of this kind than it would by following a consistent policy of simply denying the many frivolous petitions that are filed by a large number of litigants. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting), and cases cited. I respectfully dissent.